

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL, INC., COMEDY)	
PARTNERS, COUNTRY MUSIC.)	
TELEVISION, INC., PARAMOUNT)	
PICTURES CORPORATION, and BLACK)	
ENTERTAINMENT TELEVISION, LLC,)	
)
Plaintiffs,)	
)
vs.)	NO. 07-CV-2103
)
YOUTUBE, INC., YOUTUBE, LLC,)	
and GOOGLE, INC.,)	
)
Defendants.)	
)
)
THE FOOTBALL ASSOCIATION PREMIER)	
LEAGUE LIMITED, BOURNE CO., et al.,)	
on behalf of themselves and all)	
others similarly situated,)	
)
Plaintiffs,)	
)
vs.)	NO. 07-CV-3582
)
YOUTUBE, INC., YOUTUBE, LLC, and)	
GOOGLE, INC.,)	
)
Defendants.)	
)

VIDEOTAPED DEPOSITION OF VANCE IKEZOYE
PALO ALTO, CALIFORNIA
THURSDAY, SEPTEMBER 10, 2009

JOB NO. 17619

1 SEPTEMBER 10, 2009

2 9:40 a.m.

3

4 VIDEOTAPED DEPOSITION OF VANCE IKEZOYE,
5 WILSON SONSINI GOODRICH & ROSATI,
6 650 Page Mill Road, Palo Alto, California,
7 pursuant to notice, and before me,
8 ANDREA M. IGNACIO HOWARD, CLR, RPR, CRR, CSR
9 License No. 9830.

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1 A P P E A R A N C E S:

2

3 FOR THE PLAINTIFFS VIACOM INTERNATIONAL, INC.:

4 JENNER & BLOCK, LLP

5 By: MICHAEL DeSANCTIS, Esq.

6 LUKE PLATZER, Esq.

7 1099 New York Avenue, NW, Suite 900

8 Washington, D.C. 20001

9 (202) 639-6000 mdesanctis@jenner.com

10

11 FOR THE LEAD PLAINTIFFS AND PROSPECTIVE CLASS:

12 BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

13 By: BENJAMIN GALDSTON, Esq.

14 12481 High Bluff Drive, Suite 300

15 San Diego, California 92130-3582

16 (858) 720-3188 beng@blbglaw.com

17

18 FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE, LLC and

19 GOOGLE, INC.:

20 WILSON SONSINI GOODRICH & ROSATI, LLP

21 By: MAURA REES, Esq.

22 650 Page Mill Road

23 Menlo Park, California 94304

24 (650) 493-9300 mrees@wsgr.com

25

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

1 A P P E A R A N C E S (Continued.)

2

3 FOR THE DEPONENT:

4 BLY LAW FIRM, PC

5 By: William Bly, Esq.

6 11601 Wilshire Boulevard, Suite 500

7 Los Angeles, California 90025

8 (888) 893-6189

9

10 ALSO PRESENT: Kelly Truelove, Consultant

11 Armando Carrassco, Videographer.

12

13 ---oOo---

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1 IKEZOYE, V.

2 PALO ALTO, CALIFORNIA

3 THURSDAY, SEPTEMBER 10, 2009

4 9:40 A.M.

5

09:43:26

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09:43:26

7

THE VIDEOGRAPHER: Today's video deposition

09:43:28

8

of Vance Ikezoye is taken on September 10th, 2009, at

09:43:35

9

Wilson, Sonsini, Goodrich & Rosati, 601 South

09:43:37

10

California Avenue, Palo Alto, California. In the

09:43:41

11

Matter of Viacom International vs. YouTube,

09:43:41

12

Incorporated, and The Football Association.

09:43:46

13

Case No. is 07-CV-2203 and 07-CV-3502, in the

09:43:56

14

Court of Southern District of New York.

09:43:56

15

My name is Armando Carrasco. I represent

09:44:00

16

David Feldman Worldwide located at 600 Anton

09:44:02

17

Boulevard, Suite 1100, in Costa Mesa, California.

09:44:04

18

We are now commencing at 9:40 a.m.

09:44:13

19

Will all -- all present please identify

09:44:15

20

themselves, beginning with the witness.

09:44:17

21

MR. IKEZOYE: Vance Ikezoye, CEO of Audible

09:44:21

22

Magic Corporation.

09:44:21

23

MR. BLY: I'm Bill Bly of Bly Law Firm. I'm

09:44:24

24

representing the witness and Audible Magic.

09:44:27

25

MS. REES: Maura Rees of Wilson, Sonsini,

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1 IKEZOYE, V.

09:44:31 2 Goodrich & Rosati representing the YouTube defendants.

09:44:31 3 MR. GALDSTON: Good morning.

09:44:32 4 Benjamin Galdston of Bernstein, Litowitz,
09:44:35 5 Berger & Grossmann on behalf of the Plaintiffs in the
09:44:35 6 Class Action.

09:44:37 7 MR. TRUELOVE: Kelley Truelove, consultant
09:44:40 8 for Viacom plaintiffs.

09:44:42 9 MR. PLATZER: Luke Platzer of Jenner & Block
09:44:44 10 for the Viacom plaintiffs.

09:44:44 11 MR. DESANCTIS: I'm Michael DeSanctis of
09:44:47 12 Jenner & Block for the Viacom plaintiffs.

09:44:50 13 THE VIDEOGRAPHER: Thank you.

09:44:50 14 Will the court reporter please swear in the
09:44:52 15 witness.

09:45:01 16
09:45:01 17 VANCE IKEZOYE,
09:45:01 18 having been sworn as a witness,
09:45:01 19 testified as follows:

09:45:01 20
09:45:02 21 EXAMINATION BY MR. DESANCTIS

09:45:02 22 MR. DESANCTIS: Good morning.

09:45:04 23 Q Would you please state and spell your name
09:45:08 24 for the record.

09:45:10 25 A Vance Ikezoye, I-K-E-Z-O-Y-E.

1 IKEZOYE, V.

09:50:54 2 copyrighted music, and then we also sell services to
09:50:59 3 various digital media companies, like Web 2.0 social
09:51:04 4 networks, to identify copyrighted content that is
09:51:07 5 being uploaded by users.

09:51:16 6 Q Looking at the last of the services that you
09:51:27 7 just mentioned, the digital -- the work that you do
09:51:30 8 for digital media services, when did YouTube --
09:51:33 9 sorry -- when did Audible Magic begin providing those
09:51:36 10 kinds of services?

09:51:41 11 A To Web 2.0 companies or to just anybody in
09:51:45 12 the space?

09:51:46 13 Q Let's just start generally with anybody in
09:51:47 14 the space.

09:51:48 15 A We started providing some of the services to
09:51:52 16 the peer-to-peer companies in, I believe, 2004, in the
09:52:00 17 2004 time frame, and for those companies we helped the
09:52:11 18 peer-to-peer companies identify content that their
09:52:14 19 users were introducing into their networks.

09:52:18 20 Q Okay. In the 2004 time frame that you're
09:52:24 21 talking about, was your client base primarily
09:52:28 22 peer-to-peer services?

09:52:29 23 A Yes.

09:52:29 24 Q Can you describe -- well, actually strike
09:52:33 25 that.

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1 IKEZOYE, V.

09:52:33 2 Can you identify who some of those
09:52:35 3 peer-to-peer services were? Who were your customers
09:52:38 4 in the 2004 time frame?

09:52:42 5 A Yes. Yeah, iMesh was one of our customers
09:52:50 6 who was a peer-to-peer company, and later we had --
09:52:54 7 Kaza was a customer of ours.

09:52:56 8 Q And what exactly is a peer-to-peer service?

09:53:00 9 A A peer-to-peer service is a peer-to-peer --
09:53:02 10 it's an application that allows the sharing and
09:53:08 11 transmittal of -- of copyrighted files between users.
09:53:15 12 Similar to Naps- -- the way Napster originally was.
09:53:20 13 So users could download this application, download
09:53:24 14 files, copyrighted movie and music files, and then
09:53:28 15 also they can make those available to other users.

09:53:34 16 Q Did there come a time when Audible Magic
09:53:37 17 began providing these -- these copyright
09:53:47 18 identification services to digital media services
09:53:49 19 other than peer-to-peer networks?

09:53:51 20 A Yes, we did do that.

09:53:53 21 Q Okay. Can you describe how or the type of
09:53:58 22 customer that Audible Magic next started servicing?

09:54:03 23 A We started servicing some of the more -- the
09:54:06 24 classic Web 2.0 social network companies, where some
09:54:12 25 people call it user-generated content, where users may

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1 IKEZOYE, V.

09:54:19 2 have audio or video files, and they upload these files
09:54:22 3 to websites, and these websites then allow other users
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09:54:32 5 Q Do you recall who Audible Magic's first
09:54:41 6 customer was in the social networks base?

09:54:44 7 MS. REES: Objection; vague and ambiguous.

09:54:46 8 THE WITNESS: Our first customer that we
09:54:49 9 announced was MySpace.

09:54:59 10 MR. DESANCTIS: Q. Do you recall when that
09:55:00 11 announcement was?

09:55:01 12 A The -- the first quarter of 2007.

09:55:09 13 Q Did additional customers -- actually, when I
09:55:24 14 say "customer" -- do you prefer customer or client?

09:55:26 15 A Customer is fine.

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09:55:38 21 MR. BLY: Objection to the extent that it
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09:55:44 24 announced.

09:55:44 25 THE WITNESS: Right.

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1 IKEZOYE, V.

09:55:45 2 Other customers were YouTube, Sony Pictures
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09:56:03 4 was a customer. In total, I believe we had over --
09:56:10 5 over the period of 30 plus customers.

09:56:15 6 MR. DESANCTIS: Q. When you say "over the
09:56:16 7 period," what period are you talking about?

09:56:18 8 A From -- from 2006 through today.

09:56:26 9 Q And when you say "30 plus customers," do you
09:56:29 10 mean 30 plus customers in the social network space
09:56:34 11 that you were describing, or are you now talking about
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09:56:41 13 A No, the Web 2.0 social networking space.

09:56:47 14 Q Okay. Who are Audible -- Audible Magic's
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09:57:07 16 services in the Web 2.0 space?

09:57:12 17 A It changed over time, but some of the
09:57:16 18 people -- some of the companies that were in the space
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09:57:26 20 probably other customers that I can't remember names
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1 IKEZOYE, V.

09:57:45 2 that has anything close to our customer base.

09:57:53 3 Q And has that -- has that always been your

09:57:56 4 belief? In other words, does that extend back to

09:57:59 5 2006, or was there a time when there was a competitor

09:58:02 6 who had a larger customer base in the 2.0 space than

09:58:06 7 Audible Magic had?

09:58:09 8 A I believe from the very beginning we were --

09:58:14 9 we were the leader in the space.

09:58:32 10 Q We'll obviously be talking more about this as

09:58:35 11 the day goes on, but can you describe, in a very

09:58:39 12 general sense, what it is Audible Magic does for its

09:58:44 13 digital media customers when you've said "identify

09:58:48 14 copyrighted content"?

09:58:50 15 A We use a technology called fingerprinting,

09:58:55 16 and what fingerprinting is, is a mechanism to uniquely

09:59:02 17 identify a piece of copyrighted content.

09:59:06 18 There are -- these fingerprints are

09:59:09 19 measurements of the content that become unique to a

09:59:12 20 sound recording or to a soundtrack or to a -- an

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09:59:21 22 register their works so we know what known content is.

09:59:26 23 We take these measurements, and then we put these

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1 IKEZOYE, V.

09:59:37 2 give them software to take measurements of unknown
09:59:40 3 content, and when -- after they take these
09:59:43 4 measurements, then we can compare it to our database
09:59:45 5 of known references and identify and match the
09:59:49 6 content.

09:59:50 7 The way we provide services to the Web 2.0
09:59:54 8 customers is, they do have software. Users may upload
09:59:58 9 content to these sites, and they use our services
10:00:02 10 to -- to identify the -- the -- the copyrighted
10:00:08 11 content using our services.

10:00:10 12 Q In your answer you spoke of Audible Magic and
10:00:23 13 the customer taking measurements of pieces of content.
10:00:28 14 Is that the fingerprint that you mentioned first, or
10:00:31 15 is the measurement something other than the
10:00:34 16 fingerprint?

10:00:35 17 I'm just trying to make sure we have the same
10:00:37 18 terminology.

10:00:38 19 A It's the fingerprint. The fingerprint is a
10:00:40 20 series of measurements of characteristics of a piece
10:00:43 21 of audio or video.

10:00:44 22 Q Okay. And are you familiar with the fact
10:00:53 23 that there are fingerprints referred to as "audio
10:01:00 24 fingerprints" and others referred to as "video
10:01:04 25 fingerprints"?

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1 IKEZOYE, V.

10:01:04 2 A Yes.

10:01:04 3 Q Could you explain what the difference is, not
10:01:07 4 in hypertechnical terms, but generally.

10:01:10 5 A Well, audio fingerprints are taking
10:01:12 6 measurements of the -- the sound -- the sound on a --
10:01:14 7 on a piece of content, whether it's music or speech or
10:01:18 8 silence or sound effects. Video fingerprints tend to
10:01:23 9 refer in -- in kind of, from my perspective, as
10:01:29 10 fingerprints of the images of the video image itself.

10:02:24 11 Q I'll show you, Mr. Ikezoye, a document that
10:02:26 12 we're going to be marking as Ikezoye Exhibit 1.

10:02:29 13 (Document marked Ikezoye Exhibit 1
10:02:40 14 for identification.)

10:02:40 15 MR. DESANCTIS: I'll ask you to take a quick
10:02:48 16 look at it.

10:02:52 17 Q Do you recognize this document?

10:02:53 18 A Yes.

10:02:54 19 Q What is it?

10:02:57 20 A It was a declaration that -- that I provided
10:03:02 21 for a case regarding Aimster.

10:03:08 22 Q On the last page of the exhibit, is that your
10:03:14 23 signature?

10:03:15 24 A Yes.

10:03:15 25 Q And this was signed by you on September 10th,

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1 IKEZOYE, V.

10:03:21 2 2002; is that correct?

10:03:22 3 A That's correct.

10:03:24 4 Q Was Audible Magic a party in the Aimster
10:03:30 5 litigation?

10:03:32 6 A No.

10:03:32 7 Q Do you recall why it was that you submitted
10:03:34 8 this declaration if Audible Magic was not a party?

10:03:36 9 A That we provide technology and services that
10:03:40 10 were relevant to the -- to the -- the technical issues
10:03:47 11 regarding this litigation, and so we provided this
10:03:52 12 information to make people aware of some of our
10:03:54 13 services.

10:03:55 14 Q And have you looked at this declaration since
10:04:10 15 you filed it in September of 2002?

10:04:13 16 A No.

10:04:13 17 Q Okay. I'm gonna ask you to just very quickly
10:04:18 18 review it and let me know if there is anything in here
10:04:22 19 that -- that you now think was not true or accurate
10:04:30 20 when it was submitted or whether you still think
10:04:33 21 everything in here was true at that time, to the best
10:04:38 22 of your recollection.

10:04:47 23 MR. BLY: You're asking whether it was true
10:04:49 24 at the time, not whether anything has changed since?

10:04:51 25 MR. DESANCTIS: Right. Obviously things

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1 IKEZOYE, V.

10:04:54 2 might have changed since, but...

10:05:08 3 THE WITNESS: Okay.

10:05:10 4 MR. DESANCTIS: Q. As you look at this

10:05:11 5 today, is there any reason that you believe that

10:05:15 6 anything in here was not accurate at the time it was

10:05:17 7 filed?

10:05:19 8 A No.

10:05:19 9 Q Okay. Just put that aside for the moment.

10:05:33 10 Showing you, Mr. Ikezoye, what I'm marking as

10:05:35 11 Ikezoye Exhibit 2.

10:05:42 12 (Document marked Ikezoye Exhibit 2

10:05:42 13 for identification.)

10:05:42 14 MR. DESANCTIS: I'd ask you to take a moment

10:05:53 15 to familiarize yourself with this document.

10:06:40 16 THE WITNESS: Okay.

10:06:41 17 MR. DESANCTIS: Q. Do you recognize this

10:06:41 18 document?

10:06:42 19 A Yes.

10:06:42 20 Q What is it?

10:06:43 21 A It's a declaration that we made in the

10:06:49 22 MGM vs. Grokster case.

10:06:52 23 Q And was Audible Magic a party in the case?

10:06:57 24 A No, we were not.

10:06:58 25 Q Do you recall, then, why Audible Magic

1 IKEZOYE, V.

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09:54:22 3 to websites, and these websites then allow other users
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10:02:52 17 Q Do you recognize this document?

10:02:53 18 A Yes.

10:02:54 19 Q What is it?

10:02:57 20 A It was a declaration that -- that I provided
10:03:02 21 for a case regarding Aimster.

10:03:08 22 Q On the last page of the exhibit, is that your
10:03:14 23 signature?

10:03:15 24 A Yes.

10:03:15 25 Q And this was signed by you on September 10th,

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10:03:21 2 2002; is that correct?

10:03:22 3 A That's correct.

10:03:24 4 Q Was Audible Magic a party in the Aimster
10:03:30 5 litigation?

10:03:32 6 A No.

10:03:32 7 Q Do you recall why it was that you submitted
10:03:34 8 this declaration if Audible Magic was not a party?

10:03:36 9 A That we provide technology and services that
10:03:40 10 were relevant to the -- to the -- the technical issues
10:03:47 11 regarding this litigation, and so we provided this
10:03:52 12 information to make people aware of some of our
10:03:54 13 services.

10:03:55 14 Q And have you looked at this declaration since
10:04:10 15 you filed it in September of 2002?

10:04:13 16 A No.

10:04:13 17 Q Okay. I'm gonna ask you to just very quickly
10:04:18 18 review it and let me know if there is anything in here
10:04:22 19 that -- that you now think was not true or accurate
10:04:30 20 when it was submitted or whether you still think
10:04:33 21 everything in here was true at that time, to the best
10:04:38 22 of your recollection.

10:04:47 23 MR. BLY: You're asking whether it was true
10:04:49 24 at the time, not whether anything has changed since?

10:04:51 25 MR. DESANCTIS: Right. Obviously things

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10:07:00 2 submitted -- or why you submitted this declaration in
10:07:03 3 that case?

10:07:06 4 A Because we, again, we wanted to make -- grow
10:07:12 5 awareness of our services and our capabilities to the
10:07:16 6 market.

10:07:17 7 Q If you could flip to the last page. It's
10:07:28 8 dated February 2, 2006, and is that your signature
10:07:31 9 underneath it?

10:07:32 10 A Yes, it is.

10:07:33 11 Q Okay. I'm going to ask you the same question
10:07:36 12 that I asked you about the last document, which is, is
10:07:39 13 there -- as you sit here today, is there any reason to
10:07:42 14 think that anything in this declaration was inaccurate
10:07:46 15 at the time it was submitted? And if you want to take
10:07:50 16 a minute to look through it again, feel free.

10:08:40 17 A Okay.

10:08:49 18 Q Then, as you sit here today, Mr. Ikezoye, is
10:08:52 19 there any reason to -- that you know of why anything
10:08:54 20 in this -- or let me withdraw that and rephrase.

10:08:59 21 As you sit here today, do you have any reason
10:09:07 22 to believe, Mr. Ikezoye, that anything in that
10:09:10 23 declaration was inaccurate at the time it was
10:09:12 24 submitted?

10:09:12 25 A No.

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10:09:17 2 Q Direct your attention to paragraph 18 of the
10:09:29 3 exhibit, which is on page five. The last sentence of
10:09:39 4 that paragraph states, "The Audible Magic iMesh filter
10:09:44 5 has scaled seamlessly to 5 million lookups per day and
10:09:50 6 easily could scale to meet the needs of any network in
10:09:52 7 use today."

10:09:53 8 Can you first explain what the Audible Magic
10:09:57 9 iMesh filter was that you were talking about here in
10:09:59 10 this paragraph?

10:10:01 11 A We had provided iMesh a -- software and
10:10:09 12 services that they integrated in their software
10:10:14 13 application that users used, and so the service was to
10:10:21 14 identify content that was being uploaded or downloaded
10:10:25 15 within this network.

10:10:27 16 Q And iMesh -- is iMesh an example of one of
10:10:34 17 the Web 2.0 sites that we were talking about earlier
10:10:36 18 this morning?

10:10:37 19 A No, it's a peer-to-peer network, file sharing
10:10:40 20 network provider.

10:10:42 21 Q Okay. And what does it mean or what did you
10:10:46 22 mean when you said "the filter has scaled seamlessly
10:10:50 23 to 5 million lookups per day"?

10:10:56 24 Actually, let me break that down. Let's
10:10:58 25 start with, what does "5 million lookups per

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10:11:02 2 day" mean?

10:11:04 3 A It means a lookup is when we have -- we're
10:11:08 4 presented with an unknown file and we're looking that
10:11:11 5 up and trying to match the characteristics against a
10:11:14 6 database of known content. So one lookup is one
10:11:18 7 unknown file being -- trying to be identified.

10:11:22 8 Q Okay. Let me just try to make sure I
10:11:24 9 understand that.

10:11:25 10 Who submits the unknown file to Audible
10:11:29 11 Magic?

10:11:31 12 A The iMesh application. So millions of users
10:11:35 13 had the iMesh application, piece of software running
10:11:38 14 on their computers. Our library was integrated in
10:11:43 15 that piece of software that users used, and so the
10:11:49 16 application automatically, when a file was gonna be
10:11:54 17 shared or was downloaded, we would take measurements
10:11:59 18 and then the application itself would automatically go
10:12:02 19 do a lookup against our servers. So users didn't have
10:12:07 20 to operate -- it was all operated within --
10:12:09 21 automatically within the software itself.

10:12:13 22 Q So when measurements were taken of -- of a
10:12:40 23 file to be downloaded on iMesh, does that mean -- is
10:12:44 24 that the same way of saying a fingerprint was made of
10:12:46 25 the file?

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10:12:47 2 A Yeah, a fingerprint was taken, as well as
10:12:49 3 other information about the file --

10:12:51 4 Q Okay.

10:12:52 5 A -- and we --

10:12:53 6 Q What other information was taken?

10:12:55 7 A I believe we would take the -- the metadata
10:12:59 8 title of the -- the file, and I also believe that we
10:13:03 9 would take a -- a -- information -- a hash of the
10:13:08 10 file.

10:13:08 11 Q Okay. An MD5 hash?

10:13:12 12 A Yes.

10:13:12 13 Q And what then, if anything, would Audible
10:13:17 14 Magic compare that fingerprint and additional
10:13:19 15 information against?

10:13:21 16 A We had a database of -- of fingerprints, as
10:13:28 17 well as associated MD5 hashes, and so we would compare
10:13:35 18 that against known hashes and then also known
10:13:39 19 fingerprints.

10:13:42 20 Q And at that time, what fingerprints were in
10:14:01 21 your database of fingerprints?

10:14:09 22 A At the time, according to this, it looks like
10:14:11 23 we had about 6 million copyrighted songs in our
10:14:15 24 database. So fingerprints were about that many songs.

10:14:18 25 Q And from whom were those fingerprints

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10:14:19 2 provided?

10:14:24 3 A The music -- music labels, both the major
10:14:27 4 music labels -- Sony, BMG, Universal, Warner, and
10:14:34 5 EMI -- as well as a number of independent record
10:14:39 6 labels.

10:14:40 7 Q Okay. So continuing through the process,
10:14:52 8 what would happen if a file to be downloaded on iMesh
10:15:00 9 matched the fingerprint of a fingerprint that was in
10:15:03 10 your database having been supplied from a record
10:15:05 11 company?

10:15:08 12 A We would get the identification after the
10:15:11 13 fingerprint was submitted to our central servers, and
10:15:15 14 we would respond to that client with an identification
10:15:21 15 that said a -- with a block or allow rule, and for
10:15:28 16 everything in the database, at this time, everything
10:15:31 17 in the database had a block rule, and so we would tell
10:15:35 18 the -- the client to block that file from being
10:15:40 19 downloaded or uploaded.

10:15:41 20 Q Okay. When you said everything in the
10:15:49 21 database had a block rule, who made that rule?

10:15:51 22 A The record label themselves when they
10:15:53 23 submitted it.

10:15:54 24 Q Okay. So the record label would provide
10:15:56 25 instructions as to whether -- whether the file to be

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10:40:23 2 Q Okay. Are they all in one big database or
10:40:25 3 are there different databases?

10:40:29 4 A We have a -- a -- a main database that
10:40:33 5 contains all of the content submitted by copyright
10:40:37 6 holders, so we have one master database. We also have
10:40:44 7 other smaller databases that are -- contain subsets of
10:40:51 8 that master database that are used in different
10:40:54 9 applications or with different customers.

10:41:01 10 Q Does that master database or main database
10:41:03 11 have a particular name that I should use so that we
10:41:06 12 know we're talking about the same thing?

10:41:08 13 A We can call it a "master database."

10:41:10 14 Q Okay. Is there something called a commercial
10:41:29 15 music database or commercial music library?

10:41:32 16 A Yes. It's -- we refer to our -- all of our
10:41:40 17 fingerprints or registrations of -- from the music
10:41:44 18 labels as our commercial music database.

10:41:47 19 Q Okay. So what fingerprints populate -- what
10:41:50 20 types of fingerprints would populate the commercial
10:41:53 21 music database?

10:41:54 22 A They are fingerprints of commercially
10:41:56 23 available musical sound recordings received from
10:42:03 24 record companies, majors and independents.

10:42:07 25 Q Approximately how many fingerprints -- or

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10:53:20 2 show, those would each be unique titles in our
10:53:23 3 database.

10:53:54 4 Q Okay. Let's go back to the libraries we were
10:53:57 5 discussing a moment ago.

10:53:58 6 When did Audible Magic first create the
10:54:03 7 commercial music library?

10:54:06 8 A It probably started in -- where we acquired
10:54:10 9 most of the content in 2002 or 2003.

10:54:27 10 Q And when did Audible Magic begin populating
10:54:33 11 the TV movie database?

10:54:40 12 A Probably, early 2006 we started with -- we
10:54:46 13 started that effort.

10:54:52 14 Q Can you describe how that effort was started.

10:54:56 15 A We were working on a video fingerprinting
10:55:03 16 technology and needed some sample files to begin to
10:55:09 17 use to -- for testing, and so we used DVDs to generate
10:55:16 18 some of the fingerprints.

10:56:11 19 (Document marked Ikezoye Exhibit 4
10:56:12 20 for identification.)

10:56:12 21 MR. DESANCTIS: Let me show you, Mr. Ikezoye,
10:56:17 22 what has been marked as Ikezoye Exhibit 4.

10:56:21 23 MR. BLY: Michael, if I could interrupt here
10:56:23 24 for a moment. When we were prepping for the
10:56:26 25 deposition yesterday, we realized that there were a

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11:48:16 2 of the works deployed for a particular application or
11:48:19 3 a customer.

11:48:23 4 In some cases, certain customers, as an
11:48:27 5 example, might only want to search a music database
11:48:31 6 and not a film and television database, therefore we
11:48:35 7 only extract from the master database the music
11:48:39 8 fingerprints to be deployed.

11:48:47 9 Q When a customer submits a lookup fingerprint
11:48:55 10 for matching purposes, does the customer select or is
11:49:00 11 it up to the customer to dictate what fingerprints and
11:49:05 12 what databases that lookup will be matched against?

11:49:09 13 A Yes. In our business model, the customer,
11:49:12 14 the -- the site, the Web 2.0 customer, the UGC site
11:49:18 15 pays us, and in that -- in that agreement, we --
11:49:24 16 the -- the customer tells us what databases to deploy,
11:49:31 17 even what fingerprints, and what titles to deploy.

11:49:34 18 Q Are there some customers who instruct Audible
11:49:50 19 Magic when they submit a lookup fingerprint to -- to
11:49:55 20 run that fingerprint for matching purposes against the
11:49:58 21 entirety of the, say, the film and TV database?

11:49:58 22 A Yes.

11:50:23 23 (Document marked Ikezoye Exhibit 5
11:50:23 24 for identification.)

11:50:23 25 MR. DESANCTIS: Let me show you what's marked

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11:59:06 2 Do you recall when Audible Magic and YouTube
11:59:19 3 first discussed a -- a customer relationship?

11:59:25 4 A I believe the first contact between Audible
11:59:28 5 Magic and -- and YouTube were in the first half of
11:59:33 6 2006.

11:59:48 7 Q And do you recall whether YouTube first
11:59:52 8 reached out to Audible Magic or whether Audible Magic
11:59:55 9 first reached out to YouTube?

11:59:57 10 A I believe YouTube reached out to Audible
12:00:03 11 Magic as a -- and I think they were referred to us by
12:00:07 12 Warner, somebody from Warner Music Group.

12:00:12 13 Q Before your first contact with YouTube, had
12:00:14 14 you had any discussions with -- with others about --
12:00:23 15 about obtaining YouTube as a customer?

12:00:29 16 A With others?

12:00:30 17 Q Perhaps the MPAA. Did you have -- do you
12:00:31 18 recall any conversations with anyone at the MPAA
12:00:35 19 about --

12:00:37 20 A I don't recall. It could have happened, but
12:00:40 21 I don't recall.

12:00:40 22 Q Okay.

12:01:15 23 (Document marked Ikezoye Exhibit 6
12:01:16 24 for identification.)

12:01:16 25 MR. DESANCTIS: Q. Let me show you,

1 IKEZOYE, V.

12:01:17 2 Mr. Ikezoye, what's been marked as Ikezoye No. 6.

12:01:23 3 Take a moment to look this over, and I'll state for
12:01:26 4 the record, in the meantime, that this is a -- what
12:01:29 5 has been marked as Exhibit 6 is a two-page document
12:01:34 6 bearing the Bates Nos. AM2090 through 2091.

12:01:48 7 A Okay.

12:01:52 8 Q Do you recognize this, Mr. Ikezoye, as an
12:01:55 9 e-mail from Chris Maxcy to Michael McTeague and CCing
12:02:03 10 Jim Schrempp and you?

12:02:07 11 A Yes.

12:02:07 12 Q Do you recall this particular e-mail?

12:02:11 13 A Not specifically. Not specifically.

12:02:16 14 Q If you turn to the second page, it actually
12:02:21 15 begins at the very bottom of the first page, the
12:02:24 16 e-mail from Chris Maxcy dated April 4, 2006, to you.
12:02:31 17 It begins, "Hi, Vance. George White at Warner Music
12:02:34 18 forwarded your contact information to me. I had a
12:02:37 19 business development for YouTube and would be
12:02:39 20 interested in speaking with you or someone on your
12:02:41 21 team about partnership opportunities between Audible
12:02:43 22 Magic and YouTube."

12:02:45 23 As far as you recall, Mr. Ikezoye, was this
12:02:48 24 the first contact between Audible Magic and YouTube?

12:02:55 25 A Yes.

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12:05:06 2 At some point, YouTube did actually begin
12:05:09 3 using Audible Magic's content identification services;
12:05:12 4 correct?

12:05:13 5 A Yes.

12:05:14 6 Q Do you recall when it was that YouTube went
12:05:21 7 live with the service, so to speak, and actually
12:05:24 8 started using Audible Magic for content ID purposes?

12:05:28 9 A I believe early 2007.

12:05:31 10 Q Okay. And do you recall when it was or was
12:05:44 11 there a time between April 2006 and early 2007 when
12:05:50 12 YouTube began testing, in some way, the Audible Magic
12:05:57 13 service?

12:05:57 14 A Yes, I believe July or August of 2006 we had
12:06:05 15 issued a test license agreement to YouTube, and the
12:06:11 16 technical teams were doing some evaluation.

12:06:19 17 Q Do you recall -- do you recall what happened,
12:06:23 18 if anything, in between July 4th, 2006, and July or
12:06:29 19 August -- I'm sorry. Let me back up. I misspoke.

12:06:35 20 Do you recall what, if anything, happened
12:06:39 21 between Audible Magic and YouTube between April 4,
12:06:45 22 2006, the date of this e-mail, and July or August of
12:06:49 23 2006 when YouTube began testing Audible Magic's
12:06:52 24 services?

12:06:53 25 A I believe there were various meetings and

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12:14:36 2 Q Okay. And is it also the case that you don't
12:14:40 3 remember who any specific conversations would have
12:14:44 4 been with?

12:14:45 5 A My guess, it would be with George White.
12:14:48 6 George White was a general contact of -- of ours at
12:14:51 7 Warner Music related to these kinds of deals.

12:15:43 8 MR. DESANCTIS: Okay. Can I ask the court
12:15:45 9 reporter how much time is remaining on this tape?

12:15:48 10 THE VIDEOGRAPHER: We have 15 minutes.

12:15:52 11 MR. DESANCTIS: Okay.

12:16:05 12 (Document marked Ikezoye Exhibit 8
12:16:06 13 for identification.)

12:16:06 14 MR. DESANCTIS: Q. Let me show you what has
12:16:11 15 been marked, Mr. Ikezoye, as Ikezoye Exhibit No. 8.
12:16:15 16 This is a multi-page document beginning with Bates
12:16:19 17 No. AM917 through 928. I'll ask the witness to take a
12:16:50 18 look through the document, which I'll note for the
12:16:53 19 record he's doing.

12:16:54 20 A Yes.

12:16:54 21 Q Do you recognize this, Mr. Ikezoye, as a --
12:17:01 22 the topmost document, as an e-mail from Franck
12:17:07 23 Chastagnol to Jim -- Jim Schrempp, CCing you and
12:17:12 24 others, dated September 18th, 2006?

12:17:14 25 A Yes.

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12:17:14 2 Q Okay. Do you know who Franck Chastagnol is?

12:17:21 3 A I believe he was a -- the technical contact
12:17:24 4 at YouTube for the integration of Audible Magic into
12:17:31 5 their services.

12:17:34 6 Q Was he the principal contact for Audible
12:17:36 7 Magic at YouTube?

12:17:36 8 A I believe he was.

12:17:38 9 Q Okay. Did you have discussions directly with
12:17:44 10 Mr. Chastagnol about the integration of Audible Magic
12:17:48 11 with YouTube?

12:17:49 12 A No, he was -- he was our technical contact.

12:17:52 13 Q Okay. And who at Audible Magic would have
12:17:58 14 been -- would have had those discussions with
12:18:00 15 Mr. Chastagnol about the technical integration of the
12:18:05 16 two systems?

12:18:06 17 A Jim Schrempp, our VP of engineering at the
12:18:10 18 time, would have been the prime contact at this point
12:18:12 19 in the -- in the relationship with YouTube.

12:18:16 20 Q Okay. In about the middle of this page is a
12:18:22 21 bold heading that reads "Requirements for integration
12:18:24 22 with Audible Magic Phase I database set up."

12:18:33 23 And this appears to continue for -- onto the
12:18:37 24 third page. Do you know what this part of the
12:18:46 25 document is?

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12:18:47 2 A It appears to be a document that lays out
12:18:52 3 specifications for the integration of our services
12:18:59 4 with YouTube.

12:19:06 5 Q Let me direct your attention to the bottom of
12:19:33 6 the first page. There's a bold heading "Fingerprint
12:19:38 7 match API." What does "API" mean?

12:19:41 8 A Application Programming Interface.

12:19:42 9 Q And what is that?

12:19:44 10 A It is a definition for the way computer
12:19:49 11 programs communicate and interact, so it's an
12:19:54 12 interface, a program interface, so it's the -- the
12:19:57 13 definition of the way the calls and the programs
12:20:01 14 interact.

12:20:02 15 Q Okay. And the first bullet point says, "A
12:20:06 16 single match API call should have ability to query
12:20:10 17 against Warner DB and/or YouTube DB."

12:20:15 18 Can you explain what that means?

12:20:17 19 A It appears to say that when we get a -- when
12:20:21 20 a match -- when an unknown is sent, that -- that
12:20:30 21 the -- the way -- the API call should be defined. It
12:20:34 22 should be able to query against both -- be looked up
12:20:40 23 against both the Warner database and/or the YouTube
12:20:44 24 database.

12:20:44 25 Q Okay. Can you explain, I don't think we've

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12:20:46 2 discussed yet, what is the Warner database?

12:20:51 3 A In this context, it is -- in the Phase I

12:20:56 4 above, it has the Warner database, the database with

12:21:02 5 Warner Music content.

12:21:04 6 Q Was that a custom database developed

12:21:08 7 specifically for YouTube, or is that a database of

12:21:12 8 Audible Magic's that was for use with all of its

12:21:15 9 customers?

12:21:17 10 A As I talked about before, we have a master

12:21:20 11 database, and we can segment that database and set up

12:21:24 12 custom databases.

12:21:27 13 In this case, the Warner database would be we

12:21:32 14 would take out -- we would copy all of the

12:21:38 15 fingerprints of content that was owned by Warner --

12:21:44 16 registered by Warner Music and put that in a special

12:21:46 17 database.

12:21:47 18 So it would be -- had been a custom database

12:21:50 19 for this YouTube implementation.

12:21:51 20 Q Okay. And what is the YouTube DB?

12:22:02 21 A I -- I believe that the YouTube DB, in this

12:22:08 22 time frame, was a database that was specifically for

12:22:13 23 YouTube, and we, I believe, called it a submitted

12:22:18 24 content database. So it gave the capability of

12:22:25 25 YouTube to -- to take content and -- and generate

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12:22:29 2 fingerprints and put them into a separate database.

12:22:41 3 Q Okay. So that -- so is that another example
12:22:44 4 of a customized database designed specifically for one
12:22:48 5 customer, in this case YouTube?

12:22:52 6 A Yeah. In this case, actually, we -- in most
12:23:01 7 cases, our database is -- the content is supplied by a
12:23:08 8 copyright holder to us and then we deploy it in a
12:23:10 9 database. In this case, in a YouTube database or a
12:23:13 10 submitted content database, the site itself can submit
12:23:16 11 fingerprints into a database.

12:23:21 12 Q Okay. And is that -- is that what -- is that
12:23:23 13 how the YouTube database worked?

12:23:24 14 A I believe that is what this is referring to.

12:23:27 15 Q Okay. What kind of fingerprints would
12:23:31 16 YouTube submit into the YouTube database?

12:23:36 17 A We provided the -- the feature, the
12:23:40 18 functionality to let them register content. What they
12:23:45 19 registered, we -- we really didn't know why or what
12:23:50 20 was registered.

12:23:50 21 Q When you say "registered," I don't think
12:23:54 22 that's a term we discussed before.

12:23:55 23 A I mean, put in the database, deployed in the
12:23:57 24 database. So what content they deployed -- they
12:23:59 25 register -- they put in this database, we didn't know.

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13:24:50 2 Q And it begins, "Gentleman, Vance has signed
13:24:55 3 the agreement. Enclosed is the final."

13:25:00 4 Do you see that?

13:25:00 5 A Yes.

13:25:00 6 Q Do you know what agreement this is talking
13:25:02 7 about?

13:25:02 8 A It's referring to the -- the service
13:25:05 9 agreement that we signed with YouTube.

13:25:07 10 Q Okay. And turning your attention to the
13:25:12 11 third page of the exhibit, is this the final version
13:25:18 12 of the agreement, the service agreement between
13:25:23 13 YouTube and Audible Magic?

13:25:25 14 A It appears to be, yes.

13:25:30 15 Q Okay. Okay.

13:25:37 16 Is it -- is it normal that when Audible Magic
13:25:43 17 gets a new customer, it would take a number of months
13:25:51 18 to negotiate a service agreement?

13:25:57 19 A Can you repeat that question? Is it --

13:25:58 20 Q Sure. Let me -- let me state it another way.

13:26:01 21 We had seen earlier that the first contact
13:26:03 22 between YouTube and Audible Magic was in April of '06;
13:26:07 23 correct?

13:26:09 24 A Yes.

13:26:09 25 Q This contract is dated October '06.

1 IKEZOYE, V.

13:38:19 2 database that was getting transactions in the first
13:38:22 3 quarter of 2007.

13:38:26 4 Q And when the -- at that time, in the first
13:38:37 5 quarter 2007, when the Audible Magic service went live
13:38:43 6 on YouTube, do you recall what fingerprints YouTube
13:38:50 7 had requested that their custom database be populated
13:38:53 8 with?

13:38:54 9 A My recollection is that it was Universal
13:38:57 10 Music content that was populating the database.

13:39:01 11 Q Do you recall why it was Universal Music?

13:39:05 12 A No.

13:39:05 13 Q Okay. Do you know -- did it always -- did it
13:39:10 14 remain Universal Music or was -- were more
13:39:15 15 fingerprints ever added to that?

13:39:17 16 A Other fingerprints were added over time.

13:39:19 17 Q Okay.

13:39:38 18 (Document marked Ikezoye Exhibit 10
13:39:38 19 for identification.)

13:39:38 20 MR. DESANCTIS: Let me show you what's being
13:39:42 21 marked as Ikezoye Exhibit 10. I'll ask you to take a
13:39:47 22 quick look at it. This is a multi-page document
13:39:50 23 bearing the Bates No. AM836 through 844.

13:40:36 24 Q I'm just gonna ask you a couple of questions
13:40:39 25 about the first couple of pages.

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1 IKEZOYE, V.

13:40:41 2 A Okay.

13:40:42 3 Q Do you recognize this, Mr. Ikezoye, as the --
13:40:49 4 a chain of e-mails between people at Audible Magic and
13:40:54 5 people at YouTube?

13:40:55 6 A Yes.

13:40:55 7 Q And the topmost e-mail is from Franck
13:41:04 8 Chastagnol to Jim Schrempp, CC to Vance Ikezoye, dated
13:41:13 9 August 17th, 2006, correct?

13:41:17 10 A Yes.

13:41:17 11 Q I'd like to direct your attention to the
13:41:18 12 bottom of the first page. This is from Franck
13:41:22 13 Chastagnol to Jim Schrempp, CCed to you, dated
13:41:27 14 August 16, 2006.

13:41:37 15 At the bottom, Mr. Chastagnol writes,
13:41:37 16 "Initially we will ask you to populate the reference
13:41:46 17 fingerprint database with the catalog of only one of
13:41:48 18 those companies. By the way, I assume this is
13:41:51 19 something you can do; correct? But as we sign new
13:41:54 20 contracts, we will add catalogs from other companies."

13:42:07 21 Do you understand what is meant by "signing
13:42:10 22 new contracts"?

13:42:14 23 MS. REES: Objection; calls for speculation.

13:42:15 24 MR. DESANCTIS: Q. Well, I -- I'm asking --
13:42:16 25 I'm asking if you understood what is meant by this.

1 IKEZOYE, V.

13:42:20 2 You were CCed on it.

13:42:22 3 A Yeah, I believe it was a great licensing
13:42:24 4 agreement between the companies.

13:42:25 5 Q Between what companies?

13:42:29 6 A YouTube and content owners.

13:42:30 7 Q Okay. So your understanding of the
13:42:31 8 arrangement -- is it your understanding of the
13:42:36 9 arrangement that as YouTube signed new contracts with
13:42:39 10 content owners, YouTube would then request that that
13:42:45 11 content owners' fingerprints be put into the YouTube
13:42:51 12 custom database?

13:42:52 13 MS. REES: Objection; calls for speculation;
13:42:53 14 hypothetical.

13:42:53 15 THE WITNESS: That was my understanding, and
13:42:56 16 yes.

13:42:57 17 MR. DESANCTIS: Okay.

13:43:00 18 Q Is that -- is that hypothetical, or is that
13:43:04 19 actually what happened, if you know?

13:43:06 20 MS. REES: Objection; calls for speculation.

13:43:14 21 THE WITNESS: I know, in general, that the
13:43:16 22 database was a subset. I don't know if every piece of
13:43:18 23 content in there was related to a company that had a
13:43:21 24 licensing agreement.

13:43:23 25 MR. DESANCTIS: Okay.

1 IKEZOYE, V.

14:02:32 2 proposed that Audible Magic could also provide film
14:02:37 3 and TV fingerprinting services, in addition to the
14:02:42 4 music fingerprinting services, were you ever given an
14:02:46 5 explanation from Maxcy or others why they were
14:02:49 6 declining that offer?

14:02:51 7 A No.

14:02:51 8 Q Do you recall whether -- do you recall when
14:03:13 9 the first time it was -- actually, let me withdraw
14:03:19 10 that and ask it another way to be more clear.

14:03:21 11 When was the first time you recall Audible
14:03:31 12 Magic proposing to YouTube that Audible Magic could
14:03:34 13 include services for film and TV fingerprinting?

14:03:42 14 A I don't remember specifically when. My
14:03:46 15 recollection is more of phone conversations, trying to
14:03:55 16 sell and get some interest in using some of our other
14:04:00 17 services, and there might have been other proposals
14:04:08 18 more formally given. I can't remember the dates,
14:04:12 19 though.

14:04:14 20 Q Okay. So when YouTube would submit a lookup
14:04:27 21 fingerprint to Audible Magic, Audible Magic would then
14:04:33 22 run that fingerprint against the fingerprints in the
14:04:38 23 YouTube custom database; correct?

14:04:42 24 A Yes.

14:04:42 25 Q And only against the YouTube custom database?

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1 IKEZOYE, V.

14:04:49 2 A No, those transactions were run against the
14:04:51 3 YouTube custom database and the -- our YouTube
14:04:55 4 submitted database, or in the terminology before, the
14:04:58 5 YouTube database.

14:05:00 6 Q Okay. So it was run against the YouTube
14:05:03 7 custom database and what we'll call the YouTube
14:05:07 8 submitted content database?

14:05:09 9 A Yes.

14:05:09 10 Q Okay. And is the YouTube submitted content
14:05:22 11 database the database that you testified about earlier
14:05:25 12 that contained fingerprints submitted by YouTube?

14:05:30 13 A Yes.

14:05:30 14 Q Was YouTube the first to have such a
14:05:33 15 submitted content database, the first customer?

14:05:39 16 A I believe so.

14:05:41 17 Q Okay. What was the -- what -- what -- what
14:05:44 18 function does the submitted content database serve
14:05:49 19 where the customer is providing its own fingerprints?

14:05:53 20 A Well, I don't know specifically for YouTube,
14:05:57 21 but I can -- I know how certain other customers use
14:06:02 22 it.

14:06:02 23 Q And how is that?

14:06:05 24 A Some customers use it to -- to -- if -- if a
14:06:12 25 piece of content that the fingerprint isn't

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1 IKEZOYE, V.

14:17:20 2 Q Okay. Let me direct your attention,
14:18:17 3 Mr. Ikezoye, to what's already been marked as
14:18:20 4 Exhibit -- Ikezoye Exhibit 9.

14:18:28 5 Do you have that document?

14:18:29 6 A Yes, I do.

14:18:29 7 Q Can I ask you to turn to page five of the --
14:18:46 8 I'm sorry. This is the e-mail attached -- with
14:18:48 9 attached to it the final copy of the service agreement
14:18:51 10 between YouTube and Audible Magic; correct?

14:18:53 11 A Correct.

14:18:53 12 Q Can I ask you, please, to turn to page five
14:18:56 13 of that contract?

14:19:08 14 I'd ask you to read these terms in Section 4,
14:19:13 15 under the title "Fees," and I'm going to ask you some
14:19:23 16 questions about it.

14:19:39 17 A Okay.

14:19:39 18 Q Do these terms accurately reflect what
14:19:44 19 YouTube pays Audible Magic for the content ID services
14:19:49 20 Audible Magic renders?

14:19:52 21 A Yes.

14:19:52 22 Q Okay. Are there any additional fees or
14:19:55 23 payments that YouTube makes to Audible Magic that are
14:19:59 24 not listed here in Section 4 of the contract?

14:20:03 25 A There you -- there use -- there -- during the

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1 IKEZOYE, V.

14:20:07 2 whole period of our relationship, no. There were some
14:20:10 3 other fees that YouTube was paying us.

14:20:13 4 Q What were those?

14:20:15 5 A They were paying us for fees for services
14:20:18 6 for -- to add Google Video to the service.

14:20:25 7 Q Do you recall what -- the size of those fees,
14:20:33 8 approximately?

14:20:34 9 A I -- I -- they're around 20,000 -- \$20,000 to
14:20:37 10 \$30,000, I believe, a month, I think.

14:20:40 11 Q And is YouTube or Google still paying those
14:20:45 12 fees to -- to Audible Magic today?

14:20:53 13 A No.

14:20:53 14 Q When did it stop?

14:20:57 15 A Earlier this year, I believe.

14:20:59 16 Q Why did -- why did YouTube or Google stop
14:21:02 17 paying those Google Video fees to Audible Magic?

14:21:11 18 A I believe Google shut down Google Video.
14:21:16 19 That's my recollection.

14:21:18 20 Q Okay. So what -- what services was -- were
14:21:21 21 Audible Magic providing to Google Video for these
14:21:26 22 fees?

14:21:27 23 A Primarily, being able to use our -- to be
14:21:31 24 able to provide a similar kind of transaction from
14:21:36 25 YouTube for -- to our custom YouTube database, music

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1 IKEZOYE, V.

14:21:40 2 database, to -- for Google Video as well.

14:21:46 3 Q Okay.

14:22:15 4 A Can I make one thing -- going back?

14:22:17 5 Q Yes.

14:22:18 6 A The Google Video contract seems to be 20,000,
14:22:21 7 but I don't know that for sure.

14:22:23 8 Q Okay. Is there a separate written contract
14:22:26 9 between Audible Magic and Google Video?

14:22:29 10 A Yes; there was an amendment to this contract.

14:22:34 11 Q Okay. Then -- then putting the Google Video
14:22:56 12 contract aside and just looking at the Audible Magic
14:22:58 13 relationship, can you -- can -- can you tell us what
14:23:06 14 the fees are -- what they were and what they are today
14:23:12 15 that YouTube is paying Audible Magic?

14:23:16 16 A When we originally did the agreement for the
14:23:19 17 first period, the original term, it was \$20,000 per
14:23:24 18 month, and then there's a period of -- from
14:23:32 19 January 1st, 2008, through December 31st, 2008, where
14:23:36 20 the fees went up to \$25,000 a month, and then there
14:23:40 21 was an extension for 2009 and there is an option on an
14:23:47 22 extension for 2010.

14:23:50 23 Q And was there a -- any sort of one-time lump
14:23:59 24 sum additional fee owed to Audible Magic from YouTube
14:24:03 25 at the beginning of the contract?

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1 IKEZOYE, V.

14:24:05 2 A Yeah, there was a \$200,000 amount due that
14:24:14 3 needed to be paid on execution.

14:24:16 4 Q Okay. So -- and did YouTube actually pay
14:24:19 5 Audible Magic \$200,000 on execution of the contract?

14:24:22 6 A I believe so.

14:24:23 7 Q Okay. Is YouTube still using Audible Magic
14:24:31 8 content ID services today?

14:24:34 9 A Yes.

14:24:34 10 Q Is it still being governed by this same
14:24:37 11 contract?

14:24:38 12 A Yes.

14:24:38 13 Q Okay. Do you know what it would cost YouTube
14:25:05 14 to include in its custom database fingerprints from
14:25:15 15 Audible Magic's film and TV reference database?

14:25:24 16 A Not specifically, because the way our pricing
14:25:27 17 would go for this would be, we would need to
14:25:29 18 understand the transaction volume, and so
14:25:34 19 understanding the transaction volume, I could give you
14:25:37 20 a price.

14:25:38 21 Q Okay. If you assumed that the transaction
14:25:41 22 volume -- volume was the same as the transaction
14:25:47 23 volume covered in the existing contract that we're
14:25:50 24 looking at now, can you approximate what that price
14:25:55 25 would be?

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1 IKEZOYE, V.

14:25:56 2 A My guess would be at least double the price
14:25:59 3 that's listed here.

14:26:00 4 Q Okay. Does that mean double the monthly fees
14:26:19 5 and double the one-time start-up fee? In other words,
14:26:22 6 would there be a new one-time start-up fee?

14:26:25 7 A It's all subject to negotiation, but we
14:26:27 8 probably wouldn't have a start-up fee, that one-time
14:26:30 9 fee. We would double the monthly fee.

14:26:34 10 Q I -- I'm sorry. You said you probably would
14:26:36 11 not have --

14:26:36 12 A Would not.

14:26:36 13 Q -- a start-up fee?

14:26:37 14 A We probably would not have a start-up fee.

14:26:40 15 Q But you would double the monthly fee?

14:26:45 16 A Right.

14:26:45 17 Q Okay. Do you recall whether YouTube's
14:27:24 18 testing of Audible Magic's content ID services began
14:27:30 19 at the time this contract was executed or whether it
14:27:33 20 began prior to that?

14:27:35 21 A I believe it was prior to the execution of
14:27:37 22 this contract.

14:28:14 23 MR. DESANCTIS: Okay. Can we go off the
14:28:15 24 record for two minutes and just take a very short
14:28:21 25 break.

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1 IKEZOYE, V.

14:44:09 2 Q Okay.

14:44:09 3 A But it wasn't that the technology of the
14:44:11 4 systems had to be -- it wasn't rocket science or
14:44:15 5 anything. We would just have to have it deployed.

14:44:19 6 Q I see.

14:44:20 7 So the technology was in place, it just
14:44:22 8 hadn't been deployed?

14:44:24 9 A Right. Basically, yes.

14:44:26 10 Q Okay. And, well, what -- now I'm unclear.

14:44:35 11 Looking at the late 2005 time frame, to say
14:44:39 12 that the -- the technology was in place, but it hadn't
14:44:42 13 been deployed, what -- what does that mean exactly?

14:44:44 14 A It just means that we have the capability of
14:44:49 15 taking a fingerprint, using our content identification
14:44:53 16 fingerprinting technology to identify copyrighted
14:44:57 17 content and to do a lookup against an ID server and to
14:45:04 18 respond with an identification and business rules.
14:45:08 19 That core technology has been working for years before
14:45:14 20 that point.

14:45:15 21 Q Since when?

14:45:19 22 A That basic techno- -- that basic structure
14:45:24 23 and architecture, Replicheck, you know, 2003 or 2004,
14:45:33 24 it hadn't been deployed specifically to identify audio
14:45:40 25 on a video, but the technology is the same.

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1 IKEZOYE, V.

14:45:45 2 Q Okay. Can you just clarify that very last
14:45:54 3 sentence by saying "the technology is the same"?

14:45:59 4 A Up until, you know, the 2000 -- late
14:46:04 5 2005/2006 time frame, the technology that had been
14:46:07 6 primarily used to identify audio files, MP3 files for
14:46:16 7 copyrighted content. All that we did in doing these
14:46:20 8 video files, was to take out the soundtrack, the audio
14:46:26 9 track of the video and apply the same technology,
14:46:30 10 which is identifying the audio.

14:46:32 11 So around that 2005/2006 time frame is when
14:46:37 12 we had implemented the capability to do that
14:46:41 13 soundtrack, take that soundtrack off and apply our
14:46:46 14 base technology.

14:46:47 15 Q I see.

14:46:48 16 And could you have implemented that
14:46:50 17 technology earlier, had a customer asked you to do so?

14:46:56 18 A Yes.

14:46:56 19 Q Okay. How much earlier in the history of
14:47:06 20 Audible Magic's development?

14:47:07 21 A My guess is that easily the beginning of 2005
14:47:11 22 and probably 2004 kind of time frame.

14:47:16 23 Q Okay.

14:47:58 24 (Document marked Ikezoye Exhibit 14
14:47:59 25 for identification.)

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1 IKEZOYE, V.

15:12:09 2 were removed before or after YouTube went live with
15:12:17 3 the Audible Magic -- Audible Magic services?

15:12:21 4 A No, I can't remember.

15:12:23 5 Q Okay. Can I direct your attention back to
15:12:38 6 Exhibit 14. On the second page, bearing the Bates No.
15:12:50 7 AM4625, could you look at the middle e-mail and tell
15:12:58 8 me if that refreshes your recollection?

15:13:00 9 A Well, reading this, it looks like David King
15:13:06 10 from YouTube directed Lou, who was building the
15:13:09 11 databases, to remove the Warner content from our --
15:13:12 12 the database build that we did for YouTube.

15:13:16 13 Q Okay. And do you recall why?

15:13:20 14 A No.

15:13:21 15 Q Okay. Mr. Ikezoye, I'm gonna change gears
15:15:05 16 here and ask you questions about a different period of
15:15:12 17 time and on -- and on a different topic.

15:15:14 18 Do you recall ever making a proposal to
15:15:19 19 YouTube proposing that Audible Magic implement tests
15:15:30 20 to fingerprint -- to look for fingerprint matches with
15:15:37 21 content from MPAA members?

15:15:42 22 A Yes, I -- I -- I remember a document that we
15:15:50 23 proposed that I don't remember the time frame of that.

15:15:52 24 Q Okay. When -- when -- I'm sorry.

15:15:53 25 I said MPAA. What's your understanding of

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1 IKEZOYE, V.

15:15:55 2 what MPAA is?

15:15:58 3 A The Motion Picture Association of America.

15:16:00 4 Q And its members are?

15:16:03 5 A The film studios.

15:16:06 6 Q Okay. Do you know if Paramount is a member?

15:16:09 7 A Through Viacom, yes.

15:16:10 8 Q Okay.

15:16:20 9 (Document marked Ikezoye Exhibit 17
15:16:21 10 for identification.)

15:16:21 11 MR. DESANCTIS: I'll show you, Mr. Ikezoye,
15:16:24 12 what is -- has been marked as Exhibit 17.

15:16:37 13 Q Is this the proposal that Audible Magic made
15:16:42 14 to YouTube concerning searches for content owned by
15:16:46 15 MPAA members?

15:16:48 16 A It is a proposal that we wrote about -- yes,
15:16:54 17 about a pilot test.

15:16:56 18 Q Okay. When you say "we wrote," were you
15:17:02 19 involved in writing this proposal?

15:17:03 20 A Most likely, yes.

15:17:04 21 Q Okay. And it's dated October 9th, 2006. Do
15:17:09 22 you have any reason to believe that that's not when
15:17:10 23 this proposal was created?

15:17:13 24 A No.

15:17:13 25 Q Okay. And do you recall ever making this

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1 IKEZOYE, V.

15:20:32 2 was Chris Maxcy.

15:20:34 3 Q And what was the reception at YouTube to your
15:20:54 4 proposals for searching of content owned by MPAA
15:21:00 5 members?

15:21:01 6 MS. REES: Objection; mischaracterizes
15:21:03 7 testimony; lacks foundation.

15:21:04 8 THE WITNESS: While they were never accepted,
15:21:10 9 I don't believe there was much conversation regarding
15:21:12 10 it.

15:21:13 11 MR. DESANCTIS: Q. Is that because -- is
15:21:17 12 that because YouTube never showed much interest in the
15:21:20 13 proposals, or is there another reason?

15:21:23 14 MS. REES: Same objections.

15:21:24 15 THE WITNESS: Sorry.

15:21:26 16 MS. REES: Also vague.

15:21:34 17 THE WITNESS: My perception was -- is that
15:21:37 18 there was no -- there wasn't the interest in -- in
15:21:43 19 utilizing us for anything more than music.

15:21:46 20 MR. DESANCTIS: Okay.

15:21:48 21 Q Do you know why?

15:21:59 22 A No.

15:21:59 23 Q And has YouTube, in fact, ever used Audible
15:22:03 24 Magic for more than music?

15:22:04 25 MS. REES: Objection; asked and answered.

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1 IKEZOYE, V.

15:23:32 2 for -- related to searching Audible Magic's databases
15:23:37 3 for materials owned by MPAA members?

15:23:42 4 A Not that I'm aware of.

15:23:44 5 Q In Exhibit 17 that we've been looking at, the
15:24:16 6 sixth black bullet point down bears the header "MPAA
15:24:19 7 test."

15:24:19 8 Do you see that?

15:24:21 9 A Yes.

15:24:21 10 Q And the third white bullet point below that
15:24:28 11 reads, "Audible Magic will subsidize its development
15:24:32 12 cost for the modification of its service."

15:24:35 13 What does that mean?

15:24:38 14 A This kind of statement would mean that if we
15:24:41 15 had any development costs to implement the test and to
15:24:45 16 modify our existing service to YouTube, that we would
15:24:51 17 subsidize and pay for some of the development costs.

15:24:57 18 Q And not pass that cost on to YouTube?

15:25:01 19 A Correct.

15:25:02 20 Q Okay. Why was Audible Magic willing to
15:25:12 21 subsidize those development costs and not pass those
15:25:15 22 on to YouTube?

15:25:19 23 A Because we would hopefully be able to sell
15:25:22 24 the incremental -- the service and get more revenue
15:25:25 25 from YouTube longer term.

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1 IKEZOYE, V.

15:25:27 2 Q And the next black bullet point down says,
15:25:40 3 "Test cost \$10,000"; do you see that?

15:25:44 4 A Yes.

15:25:44 5 Q Is that the cost to Audible Magic or to
15:25:49 6 YouTube?

15:25:53 7 A That would be the cost to somebody to help
15:25:56 8 pay for this, this whole process that we've outlined
15:26:00 9 above.

15:26:00 10 Q Okay. And would that be the total cost for
15:26:02 11 this process?

15:26:03 12 A That's what -- the costs that we wanted to
15:26:06 13 charge, yes.

15:26:07 14 Q Do you recall whether you ever communicated
15:26:16 15 to YouTube that such a test would cost \$10,000 and
15:26:23 16 that Audible Magic was willing to subsidize its
15:26:27 17 development costs?

15:26:29 18 A I don't know if this was communicated to
15:26:31 19 YouTube.

15:26:32 20 Q Okay. The -- that same bullet point we were
15:26:52 21 looking at previously that reads "Audible Magic will
15:26:54 22 subsidize its development costs for the modification
15:26:57 23 of its service," what type of modification might have
15:27:01 24 been required in October of 2006 in order to perform
15:27:06 25 this test?

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1 IKEZOYE, V.

15:27:09 2 A Well, in the -- in this overview, we were
15:27:11 3 talking about having fingerprint generation tools
15:27:18 4 available to the studios to generate fingerprints, and
15:27:22 5 there may have -- may or may not have been fingerprint
15:27:27 6 modifications necessary for that. We would have to
15:27:31 7 deploy other servers beyond the music database for
15:27:38 8 this, and so there -- there might have been some costs
15:27:43 9 with respect to that.

15:27:45 10 Q Okay. And would you -- would those
15:27:49 11 modifications have been extensive based on the state
15:27:53 12 of Audible Magic's technology in October 2006?

15:27:58 13 MS. REES: Objection; vague as to
15:28:01 14 "extensive."

15:28:02 15 THE WITNESS: No. They were small changes,
15:28:07 16 and so we could -- we could do all this.

15:28:10 17 MR. DESANCTIS: Q. Do you know whether
15:28:15 18 Audible Magic ever actually made those kinds of
15:28:18 19 changes, whether -- whether in the context of this
15:28:21 20 proposal or -- or anything else?

15:28:28 21 A Well, today we do offer services to identify
15:28:31 22 both music and film and television shows, and we
15:28:34 23 provide tools to -- to studios, film and television
15:28:41 24 studios and to fingerprint content and provide
15:28:44 25 those -- that fingerprints -- those fingerprints to

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1 IKEZOYE, V.

15:49:29 2 (Document marked Ikezoye Exhibit 18
15:49:33 3 for identification.)

15:49:33 4 MR. DESANCTIS: Q. Let me show you, sir,
15:49:34 5 what's been marked as Exhibit 18.

15:49:36 6 A Okay.

15:49:36 7 Q This is a two-page document --

15:49:41 8 A Okay.

15:49:42 9 Q -- bearing the -- take -- take a look at it,
15:49:46 10 and for the record I'll state that it bears the Bates
15:49:49 11 Nos. G00001-739564 through '65.

15:49:59 12 And, Mr. Ikezoye, I'd like to direct your
15:50:06 13 attention to the last e-mail in this chain --

15:50:08 14 A Yep.

15:50:08 15 Q -- on page two.

15:50:13 16 A Okay.

15:50:14 17 Q Does this refresh your recollection of ever
15:50:16 18 having been introduced to Adam Cahan?

15:50:20 19 A Well, obviously, yes, but I did receive an
15:50:25 20 e-mail introduction to Adam at MT -- at MTV Viacom.

15:50:31 21 Q Okay. The e-mail at the bottom of the chain
15:50:38 22 with -- the last e-mail in this document, on page two,
15:50:42 23 is from Chris Maxcy to you, copied to Adam Cahan,
15:50:50 24 dated December 5th, 2006, and the second -- starting
15:50:54 25 with the second sentence, it reads, "We are

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1 IKEZOYE, V.

15:51:00 2 confidently talking to Adam and his team about a
15:51:06 3 partnership and wanted to get the two of you
15:51:09 4 connected. Adam has a number of questions regarding
15:51:12 5 how Viacom can get its content into the AM database."

15:51:19 6 Do you recall being involved in discussions
15:51:26 7 with Viacom and YouTube regarding a potential
15:51:32 8 partnership between Viacom and YouTube?

15:51:36 9 A I remember that -- that we were introduced to
15:51:41 10 Viacom and MTV about getting their content into our
15:51:46 11 database, and this refreshes my memory that, actually,
15:51:51 12 Chris at -- Maxcy at YouTube made the introduction.

15:51:55 13 I do know, subsequently, that we did start to
15:51:59 14 get their content in our database.

15:52:01 15 Q And was this introduction -- did this lead to
15:52:07 16 the first time that -- that Audible Magic had dealt
15:52:08 17 with Viacom, or had -- had you dealt with Viacom
15:52:11 18 previously?

15:52:15 19 A This might have been the first substantial
15:52:18 20 conversation with Viacom. I might have been in some
15:52:21 21 meetings where somebody from Viacom was in the
15:52:26 22 meeting, but this is probably the first -- the most
15:52:29 23 substantial introductions and discussions.

15:52:32 24 Q What, if anything, do you recall about the
15:52:37 25 dis- -- the discussions that you were involved in

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1 IKEZOYE, V.

15:52:40 2 regarding a potential partnership between Viacom and
15:52:44 3 YouTube?

15:52:51 4 A I don't know if I knew that much about
15:52:53 5 exactly what YouTube and Viacom were -- were talking
15:52:57 6 about, what kind of relationship. I think, from this
15:53:01 7 point on, it was mostly a focus between Audible Magic
15:53:05 8 and Viacom or MTV to start getting content into our
15:53:13 9 database. Chris might have backed out from that
15:53:20 10 point.

15:53:20 11 Q What do you mean Chris backed out?

15:53:23 12 A Out of the -- out of this -- in this point
15:53:27 13 about the conversation. He might have just left it to
15:53:29 14 us. I'm not sure he was copied after that.

15:53:33 15 Q I see.

15:53:36 16 This is dated December 5th, 2006.

15:53:42 17 Do you recall when it was that Viacom
15:53:45 18 ultimately provided finger- -- began providing
15:53:50 19 fingerprints to Audible Magic?

15:53:51 20 A In the late first quarter of 2007 or early
15:53:54 21 second quarter of 2007, I believe. We have a report.

15:54:04 22 Q Yeah, if you want to --

15:54:05 23 A Yeah.

15:54:05 24 Q -- refer to that report --

15:54:06 25 A Yeah.

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1 IKEZOYE, V.

15:54:06 2 Q -- that you reference, you -- you certainly
15:54:10 3 can.

15:54:11 4 A Yeah.

15:54:11 5 Q I think it was --

15:54:13 6 A 4A. Yeah, 4A kind of shows content
15:54:23 7 starting -- looks like April was the biggest load.
15:54:29 8 Yeah, April of 2007.

15:54:39 9 Q In April of 2007?

15:54:41 10 A Yes.

15:54:41 11 Q Okay.

15:54:42 12 A That's when the big bulk of fingerprints were
15:54:45 13 starting to get registered.

15:54:47 14 Q And do you recall who you were dealing with
15:54:49 15 at Viacom at that time? Was it Adam Cahan or someone
15:54:53 16 else?

15:54:53 17 A I believe we did -- I had a lot of
15:54:55 18 conversations with Nick Rockwell, and we had some on
15:54:58 19 and off conversations with -- with Joe Simon, but I
15:55:05 20 think Nick was the -- our prime contact.

15:55:07 21 Q And do you know if by that time, April 2007,
15:55:11 22 Viacom and YouTube had, in fact, entered into a
15:55:14 23 partnership together?

15:55:17 24 A No, I don't know that.

15:55:18 25 Q Okay. Do you know why Chris Maxcy introduced

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1 IKEZOYE, V.

16:01:32 2 indicated on that first e-mail on the first page of
16:01:37 3 this exhibit, and they're named Long -- Long From
16:01:42 4 Video Proposal 3-10-07.pdf, and Music Type 3 Proposal
16:01:49 5 3-9-07.pdf.

16:01:51 6 Do you know what those are?

16:01:54 7 A Yeah, their proposals look -- that are
16:01:58 8 attached here for identifying long-form video, as well
16:02:01 9 as a more intensive advanced search of music.

16:02:06 10 Q What does long-form video mean?

16:02:08 11 A Generally, long-form video refers to longer
16:02:13 12 pieces than just clips of a -- of a video. Whole
16:02:18 13 videos or whole TV shows are generally viewed --
16:02:21 14 described as long-form content.

16:02:23 15 Q Okay. And what was the "Music Type 3"? What
16:02:30 16 does that mean?

16:02:32 17 A We have a more advanced service for
16:02:38 18 identifying music. Again, where, instead of a file
16:02:45 19 being the whole song, if there was a subset of the
16:02:47 20 song, say, 30 or 40 seconds of the song, we could
16:02:55 21 still identify it.

16:02:55 22 Q And were these proposals that Audible Magic
16:03:07 23 made to YouTube?

16:03:11 24 A Yes. From the look of this, yes, we made the
16:03:13 25 formal proposal to them to do both.

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1 IKEZOYE, V.

16:03:16 2 Q Okay. Other than this document, do you
16:03:18 3 recall those proposals? Do -- do you recall being
16:03:20 4 involved with those proposals?

16:03:21 5 A I think I was probably copied on it and --
16:03:26 6 and so, as I mentioned, we were always looking for
16:03:29 7 opportunities to sell more services to our customers
16:03:34 8 and YouTube also, and so, yes, this is one of the
16:03:39 9 times that we talked about it.

16:03:41 10 Q And do you know whether YouTube ever accepted
16:03:47 11 this proposal, these proposals?

16:03:50 12 A We are not providing any services today, so
16:03:53 13 we didn't sell them on these proposals.

16:03:56 14 Q Are you providing these services to any
16:03:59 15 customers?

16:04:02 16 A Yes.

16:04:02 17 Q Are you providing them to any UGC customers?

16:04:08 18 A Yes.

16:04:08 19 Q Can you testify as to which UG -- for which
16:04:42 20 UGC customers you're providing these services, the
16:04:46 21 long-form video, and the music type three?

16:04:49 22 MR. BLY: Objection to the extent that it
16:04:50 23 calls for the identity of customers that are subject
16:04:52 24 to a confidentiality agreement.

16:04:55 25 You can name the ones that have been publicly

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1 IKEZOYE, V.

16:04:59 2 announced.

16:05:00 3 THE WITNESS: Yeah.

16:05:05 4 Veoh was a customer of these services,
16:05:09 5 Microsoft was a -- Soapbox was a customer of these
16:05:12 6 services.

16:05:14 7 MR. DESANCTIS: Q. Any others that you're --
16:05:15 8 that you can discuss?

16:05:23 9 A For some of the services, the long -- I think
16:05:26 10 for the music, I think Nokia was a customer. I think
16:05:30 11 we had a report, actually, that indicated some of the
16:05:33 12 people that were using all these services.

16:05:36 13 Q Okay. And when you -- when you mention Veoh
16:05:42 14 and Microsoft, I think this is the first mention of
16:05:45 15 Veoh. What is Veoh?

16:05:46 16 A Veoh was a UGC site. Veoh was a video
16:05:48 17 sharing site very similar to YouTube.

16:05:51 18 Q And when you said Veoh was a customer of
16:06:00 19 these services, Microsoft Soapbox was a customer of
16:06:03 20 these services, do you mean both the long-form video
16:06:05 21 and the music type three?

16:06:10 22 A They were, for sure, the -- the video, and
16:06:17 23 I'm unsure about the music.

16:06:18 24 Q Do you recall when it was that Veoh began
16:06:20 25 using the long-form video service?

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1 IKEZOYE, V.

16:06:26 2 A I believe they used it from the beginning,
16:06:28 3 and -- but I'm not sure when that was exactly started.

16:06:34 4 Q Yeah.

16:06:34 5 Do you mean the beginning of Audible Magic's
16:06:36 6 relationship with Veoh?

16:06:37 7 A Yes, from the -- from the -- the initial
16:06:39 8 service was using that.

16:06:41 9 Q Okay.

16:06:48 10 A Five, five.

16:07:06 11 So it was at least August 2007. I don't know
16:07:10 12 why this -- that's when all this started.

16:07:25 13 (Document marked Ikezoye Exhibit 20
16:07:25 14 for identification.)

16:07:25 15 MR. DESANCTIS: Show you, Mr. Ikezoye, what's
16:07:28 16 been marked as Exhibit 20.

16:07:34 17 Q Do you recognize this?

16:07:35 18 A Yes, it's a -- our content services agreement
16:07:39 19 with -- between Audible Magic and Veoh.

16:07:43 20 Q Okay. Do you recall, Mr. Ikezoye, when
16:07:55 21 Soapbox, which is owned by Microsoft, first began
16:08:00 22 using the long-form video service?

16:08:06 23 A No, I don't recall exactly when.

16:08:31 24 Q Okay.

16:09:03 25 ///

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1 IKEZOYE, V.

16:10:33 2 audio fingerprinting service?

16:10:34 3 A It was an audio fingerprinting service.

16:10:38 4 Q Okay. But it was used to find matches with
16:10:45 5 video files?

16:10:51 6 A Yes.

16:10:51 7 Q So how is it that a -- or why is it, if it's
16:10:59 8 true, that an audio fingerprint would be effective in
16:11:07 9 identifying a video file --

16:11:13 10 A Because --

16:11:13 11 Q -- if you agree that it is?

16:11:16 12 A It is.

16:11:16 13 Q Let me ask you that first.

16:11:18 14 Is it effective in identifying a video file?

16:11:21 15 A Yes, it is effective.

16:11:22 16 Q Why?

16:11:23 17 A Because you're just trying to identify a TV
16:11:25 18 show or a movie, and a -- and a movie or a TV show has
16:11:32 19 two components that can be used to identify it.

16:11:35 20 The video image or the soundtrack attached to
16:11:39 21 it, they both will really uniquely identify one of
16:11:45 22 those, that piece of content. And we use the
16:11:53 23 soundtrack, the audio track of the video or the movie
16:11:59 24 and it -- we found that it was doing a very good job
16:12:01 25 at identifying TV and film content.

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16:27:29 2 (Document marked Ikezoye Exhibit 24
16:27:30 3 for identification.)

16:27:30 4 MR. DESANCTIS: Let me show you, Mr. Ikezoye,
16:27:32 5 what's been marked as Exhibit 24. This is a one-page
16:27:35 6 document bearing the Bates No. AM4623. Please take a
16:27:51 7 look at this document.

16:27:59 8 THE WITNESS: Okay.

16:28:03 9 MR. DESANCTIS: Q. Do you recognize this as
16:28:04 10 an e-mail from Lou Kvitek of Audible Magic to David
16:28:12 11 King of YouTube?

16:28:15 12 A Yes.

16:28:15 13 Q Dated February 16th, 2007?

16:28:17 14 A Yes.

16:28:17 15 Q In it Mr. Kvitek describes, to use his words,
16:28:23 16 "A summary of what we can do to address TV show
16:28:27 17 soundtrack lookup. The first being content owner
16:28:34 18 (i.e., Viacom) submit soundtracks with metadata to
16:28:38 19 Audible Magic for registration in our video clip
16:28:41 20 lookup database."

16:28:42 21 Do you see that?

16:28:43 22 A Yes.

16:28:43 23 Q He then offers additional -- additional
16:28:54 24 information of what Audible Magic can -- can do for
16:28:57 25 YouTube, and about three-quarters of the way to the

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1 IKEZOYE, V.

16:29:00 2 bottom of the text, he says, "We have this type of
16:29:04 3 lookup server ready to deploy. We need only order and
16:29:08 4 install the servers and get content from the owners."

16:29:12 5 As the CEO of Audible Magic, do you agree
16:29:16 6 that in February of 2007 Audible Magic had the type of
16:29:24 7 lookup servers ready to deploy that are described in
16:29:27 8 this e-mail?

16:29:28 9 MS. REES: Objection; lacks foundation.

16:29:31 10 THE WITNESS: We do -- did, at this time,
16:29:33 11 have the technology and software ready to deploy.

16:29:37 12 MR. DESANCTIS: Q. And what does it mean
16:29:38 13 that "we need only to order and install the servers"?

16:29:43 14 A That just means we needed to order and
16:29:48 15 install the hardware computers to run the software on.

16:29:50 16 Q And -- and -- and to get content from the
16:29:53 17 owners, what does that mean?

16:29:54 18 A And ensure that we got the reference
16:29:57 19 fingerprints and the reference content from the
16:29:59 20 copyright owners.

16:30:00 21 Q And, to your knowledge, did YouTube ever
16:30:12 22 pursue the proposed services in this e-mail from
16:30:17 23 Audible Magic?

16:30:20 24 A From its production -- putting it in
16:30:23 25 production point of view, no, they -- they did not.

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